

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARQUE GARDELEY,

Plaintiff,

v.

JAMES DZURENDA, et al.,

Defendants.

Case No. 3:24-cv-00325-MMD-CSD

ORDER

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on November 15, 2024. (ECF No. 11). The screening order imposed a stay, and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 11, 15). The parties participated in a mediation conference, but they did not reach a settlement. (ECF No. 19).

Plaintiff has filed a motion for appointment of counsel (ECF No. 3). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is dispositive and instead must be viewed together.” *Id.*

1 In this case, the Court does not find exceptional circumstances that warrant the
2 appointment of counsel. Plaintiff is hearing impaired, but he has been able to
3 communicate effectively with the Court and the Defendants. The screening order found
4 that Plaintiff successfully stated a colorable equal protection claim, and that claim does
5 not appear to be particularly complex. Therefore, the Court denies the motion for
6 appointment of counsel without prejudice.

7 For the foregoing reasons, **IT IS ORDERED** that:

8 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is
9 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
10 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
11 U.S.C. § 1915(b)(2).

12 2. Plaintiff is permitted to maintain this action to conclusion without the
13 necessity of prepayment of any additional fees or costs or the giving of security therefor.

14 3. Pursuant to 28 U.S.C. § 1915, the Nevada Department of Corrections will
15 forward payments from the account of **Marque Gardeley, #1099633** to the Clerk of the
16 United States District Court, District of Nevada, 20% of the preceding month's deposits
17 (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid
18 for this action. The Clerk of the Court will send a copy of this order to the Finance Division
19 of the Clerk's Office. The Clerk will send a copy of this order to the attention of **Chief of**
20 **Inmate Services for the Nevada Department of Corrections** at
21 **formapauperis@doc.nv.gov**.

22 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
23 a copy of Plaintiff's complaint (ECF No. 12) on the Office of the Attorney General of the
24 State of Nevada by adding the Attorney General of the State of Nevada to the docket
25 sheet. This does not indicate acceptance of service.

26 5. Service must be perfected within ninety (90) days from the date of this order
27 pursuant to Fed. R. Civ. P. 4(m).

1 6. Subject to the findings of the screening order (ECF No. 11), within twenty-
2 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
3 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
4 accepts service; (b) the names of the defendants for whom it does not accept service,
5 and (c) the names of the defendants for whom it is filing the last-known-address
6 information under seal. As to any of the named defendants for whom the Attorney
7 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
8 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
9 information. If the last known address of the defendant(s) is a post office box, the Attorney
10 General's Office shall attempt to obtain and provide the last known physical address(es).

11 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
12 shall file a motion identifying the unserved defendant(s), requesting issuance of a
13 summons, and specifying a full name and address for the defendant(s). For the
14 defendant(s) as to which the Attorney General has not provided last-known-address
15 information, Plaintiff shall provide the full name and address for the defendant(s).

16 8. If the Attorney General accepts service of process for any named
17 defendant(s), such defendant(s) shall file and serve an answer or other response to the
18 complaint (ECF No. 12) within sixty (60) days from the date of this order.

19 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
20 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
21 document submitted for consideration by the Court. If Plaintiff electronically files a
22 document with the Court's electronic-filing system, no certificate of service is required.
23 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
24 mails the document to the Court, Plaintiff shall include with the original document
25 submitted for filing a certificate stating the date that a true and correct copy of the
26 document was mailed to the defendants or counsel for the defendants. If counsel has
27 entered a notice of appearance, Plaintiff shall direct service to the individual attorney

1 named in the notice of appearance, at the physical or electronic address stated therein.
2 The Court may disregard any document received by a district judge or magistrate judge
3 which has not been filed with the Clerk, and any document received by a district judge,
4 magistrate judge, or the Clerk which fails to include a certificate showing proper service
5 when required.

6 10. This case is no longer stayed.

7 11. Plaintiff's motion for appointment of counsel (ECF No. 3) is DENIED without
8 prejudice.

9 DATED: February 26, 2025

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12 UNITED STATES MAGISTRATE JUDGE
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